

NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON -  
Chairwoman  
SANDRA D. KENNEDY  
JUSTIN OLSON  
ANNA TOVAR  
JIM O’CONNOR

In the matter of:	)	DOCKET NO. S-21157A-21-0195
ARCHIMEDES FOUNDATION TRUST	)	
a/k/a ARCHIMEDES FOUNDATION	)	<b>NOTICE OF OPPORTUNITY FOR HEARING</b>
TRUST GROUP,	)	<b>REGARDING PROPOSED ORDER TO CEASE</b>
	)	<b>AND DESIST, ORDER FOR RESTITUTION,</b>
DAVID HART and DWAYNE LOUISE	)	<b>ORDER FOR ADMINISTRATIVE PENALTIES,</b>
HART, husband and wife,	)	<b>AND ORDER FOR OTHER AFFIRMATIVE</b>
	)	<b>ACTION</b>
KIRK KOSKELLA a/k/a KIRK JAMES and	)	
JESSICA MATHIS, husband and wife,	)	
	)	
CHRISTINE TUCKER and HARRY	)	
TUCKER, wife and husband,	)	
	)	
CONRAD DEFRIESE, a married man,	)	
	)	
WOLFGANG KOVACEK, a married man,	)	
	)	
	)	
Respondents.	)	

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**  
**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) alleges that Respondents Archimedes Foundation Trust also known as Archimedes Foundation Trust Group, David Hart, Kirk Koskella also known as Kirk James, Conrad Defriese, and Wolfgang Kovacek have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities Act”).

...  
...

1 The Division also alleges that David Hart and Christine Tucker are persons who directly and/or  
2 indirectly controlled Archimedes Foundation Trust also known as Archimedes Foundation Trust Group  
3 within the meaning of A.R.S. § 44-1999(B), so that they are jointly and severally liable under A.R.S. §  
4 44-1999(B) to the same extent as Archimedes Foundation Trust also known as Archimedes Foundation  
5 Trust Group for its violations of the antifraud provisions of the Securities Act.

6 **I.**

7 **JURISDICTION**

8 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona  
9 Constitution, and the Securities Act.

10 **II.**

11 **RESPONDENTS**

12 2. At all times relevant, David Hart ("Hart") has been married to Dwayne Louise Hart, and  
13 both are residents of Arizona. Hart has not been registered with the Commission as a securities salesman  
14 or dealer.

15 3. At all times relevant, Kirk Koskella also known as Kirk James (hereinafter, may be  
16 referred to as "Koskella") has been married to Jessica Mathis and both are residents of Arizona. Koskella  
17 has not been registered with the Commission as securities salesman or dealer.

18 4. At all times relevant, Conrad Defriese ("Defriese") was a married man and a resident of  
19 Georgia. Defriese has not been registered with the Commission as a securities salesman or dealer.

20 5. At all times relevant, Wolfgang Kovacek ("Kovacek") was a married man and a resident  
21 of California. Kovacek has not been registered with the Commission as a securities salesman or dealer.

22 6. At all times relevant, Christine Tucker ("Tucker") has been married to Harry Tucker and  
23 both are residents of Arizona. Tucker is the daughter of Respondent Hart. Tucker has not been registered  
24 with the Commission as a securities salesman or dealer.

25 7. Archimedes Foundation Trust also known as Archimedes Foundation Trust Group  
26 (hereinafter "Archimedes"), whose last known address was in Mesa, Arizona. At all relevant times,

1 Archimedes was conducting business in the State of Arizona. Hart was the grantor of Archimedes,  
2 which is an irrevocable trust that was executed on January 1, 2001, and “governed under the state laws  
3 of Arizona.” From at least January of 2001, through November of 2013, Hart was sole trustee of  
4 Archimedes. Since December of 2013, Hart and Tucker have been the co-trustees of Archimedes.

5 8. From at least 2013, through at least 2016, Archimedes held a business account in  
6 Arizona at Wells Fargo Bank, N.A. During the relevant time-period, Hart and Tucker were both signers  
7 of Archimedes’ business account. Archimedes has not been registered with the Commission as a  
8 securities salesman or dealer.

9 9. Dwayne Louise Hart (“D.L. Hart”) was at all relevant times the spouse of Respondent  
10 Hart. Jessica Mathis (“Mathis”) was at all relevant times the spouse of Respondent Koskella. Harry  
11 Tucker (“H. Tucker”) was at all relevant times the spouse of Respondent Tucker.

12 10. D.L. Hart, Mathis, and H. Tucker, and may be referred to collectively as “Respondent  
13 Spouses.” Respondent Spouses are joined in this action under A.R.S. §44-2031(C).

14 11. At all relevant times, Hart was acting for his own benefit and on behalf of and for the  
15 benefit of Hart’s and D.L. Hart’s marital community.

16 12. At all relevant times, Koskella was acting for his own benefit and on behalf of and for  
17 the benefit of Koskella’s and Mathis’ marital community.

18 13. At all relevant times, Tucker was acting for her own benefit and on behalf of and for the  
19 benefit of Tucker’s and H. Tucker’s marital community.

20 14. Archimedes, Hart, Koskella, Defriese, Tucker, and Kovacek may be referred to  
21 collectively as “Respondents.”

### 22 **III.**

### 23 **FACTS**

#### 24 **Introduction**

25 15. From at least March of 2015, through at least June of 2016, Respondents Archimedes,  
26 Hart, Koskella, Defriese, and Kovacek collectively raised a total amount of \$450,000 from six

1 investors ("Investor(s)") through Archimedes' various securities offerings. From at least March of  
2 2015, through at least April of 2016, Respondents Archimedes, Hart, Koskella and Defriese raised  
3 investment capital via Archimedes' securities offerings to purportedly invest in unspecified  
4 investment trading programs/platforms located outside of the United States. During the relevant  
5 time-period, Respondents Archimedes, Hart, Koskella and Defriese promised at least one Investor  
6 high rates of returns within sixty-days and guaranteed the return of her principal investments.

7 16. From at least May of 2016, through June of 2016, Respondents Archimedes, Hart,  
8 Koskella, Defriese, and Kovacek collectively raised investment capital via Archimedes securities  
9 offerings to allegedly acquire a commercial property located in Mesa, Arizona. Respondents  
10 Archimedes, Hart, Koskella, Defriese and Kovacek promised at least two Investors high rates of  
11 returns within two-weeks and/or guaranteed the return of the Investors' principal investments.

12 17. At all times relevant, Hart was the front man for Archimedes, who signed all of  
13 Archimedes' securities offerings on behalf of Archimedes. However, according to Koskella, he was  
14 the leader, brains, and mastermind behind Archimedes. Also, Koskella, *using the name Kirk James*,  
15 fraudulently claimed to be an attorney and the "legal advisor" of Archimedes. Respondents  
16 Archimedes, Hart, Koskella, Defriese, and Kovacek made misrepresentations and/or omissions of  
17 material facts, including failing to disclose to at least two of the Investors Koskella's federal criminal  
18 conviction and permanent injunction from the Securities and Exchange Commission ("SEC").

19 **Koskella's federal criminal conviction**

20 18. On December 12, 2000, in the United States District Court for the District of Utah,  
21 Koskella pled guilty pursuant to a written plea agreement to conspiring to defraud the Internal  
22 Revenue Service, in violation of 18 U.S.C. § 371, and wire fraud, in violation of 18 U.S.C. § 1343  
23 (*see* 2:00CR-0594). On March 9, 2004, the United States District Court for the District of Utah  
24 sentenced Koskella to a term of 120 months of imprisonment and upon release of confinement 36  
25 months of supervised release. Also, Koskella was ordered to pay restitution in the amount of  
26 \$14,733,439.61.



1           19.     During the relevant time-period, between November of 1994 and December of 2000,  
2 Koskella and others “sold and promoted offshore restructuring programs to clients of Anglo America  
3 Investments Limited [which Koskella managed] ... Koskella charged between \$8,000 to \$32,000 for  
4 the program.” Koskella “promised the clients that the ‘offshore restructuring program’ would greatly  
5 reduce or eliminate their taxes.” Also, Koskella and others marketed a purported investment program,  
6 and recruited investors in the investment program, which was “frequently ... represented to be an  
7 offshore trading program.” Koskella and others obtained money from the investors in the program  
8 and used the investors’ funds for purposes not disclosed to the investors.

9           **SEC’s Order of Permanent Injunction against Koskella**

10           20.     On August 14, 2001, in the United States District Court for the Northern District of  
11 Illinois, the SEC filed a Complaint against Koskella and others (*see* 1:01-CV-6227). The SEC’s  
12 Complaint alleged that from January of 2000, through August of 2001, Koskella and others “engaged  
13 in the fraudulent offering of two ‘Corporate Revenue Bonds’ with an aggregate face value of \$500  
14 million issued by two companies with no assets or income, which Defendants knew were worthless.”

15           21.     On December 10, 2001, Koskella and his company entered into a Consent and  
16 Stipulation with the SEC. On December 14, 2001, the United States District Court for the Northern  
17 District of Illinois issued a Final Judgment and Order of Permanent Injunction (“Permanent  
18 Injunction”) against Koskella and his company (the “Defendants”). The Permanent Injunction  
19 ordered that the “Defendants ... are hereby permanently restrained and enjoined from, in the offer or  
20 sale of any securities, by use of any means or instruments of transportation or communication in  
21 interstate commerce or by use of the mails, directly or indirectly, employing any device, scheme or  
22 artifice to defraud, in violation of Section 17(a)(1) of the Securities Act of 1933 [15 U.S.C. §  
23 77q(a)(1)].”

24           22.     The Permanent Injunction further ordered that the “Defendants ... are hereby  
25 permanently restrained and enjoined from, in the offer or sale of any securities, by use of any means  
26 or instruments of transportation or communication in interstate commerce or by use of the mails,

1 directly or indirectly, engaging in any transaction, practice, or course of business which operates or  
2 would operate as a fraud or deceit upon the purchaser, in violation of Section 17(a)(3) of the  
3 Securities Act of 1933 [15 U.S.C. §§ 77(q)(a)(2) and 77q(a)(3)].”

4 **Current action**

5 23. Upon information and belief, from at least March of 2015, through at least June of  
6 2016, Respondents Archimedes, Hart, Koskella, Defriese, and Kovacek collectively offered or sold  
7 Archimedes’ securities offerings in the form of investment contracts and/or promissory notes  
8 (hereinafter, may be referred to as “investment contract(s)”) within or from Arizona to at least six  
9 Investors. The Investors collectively invested \$450,000 in Archimedes’ investment contracts. In  
10 exchange, Respondents Archimedes, Hart, Koskella, Defriese, and Kovacek represented to at least  
11 two of the Investors that they would be paid substantial returns on their investments within sixty-  
12 days or less. Also, Respondents Archimedes, Hart, Koskella, Defriese, and Kovacek promised and/or  
13 guaranteed the return of at least two of the Investors’ principal investments.

14 **Archimedes’ investment trading program offerings**

15 24. One of the Investors was a resident of Switzerland and owned a business, which did  
16 exchange investments in Europe. In or about February of 2016, that Investor travelled to New York  
17 (“NY”) for the purpose of expanding her exchange investment business into the United States. While  
18 in NY, the Investor was introduced to an earlier Investor in Archimedes. The earlier Investor  
19 informed the Investor that he knew a man [Defriese] who was offered a gold deal from a colleague  
20 of the Investor’s. The Investor asked the earlier Investor to put her in touch with Defriese.

21 25. Shortly thereafter, on or about February 14, 2016, the Investor had a conversation, via  
22 telephone, with Defriese. During the phone call, Defriese described his investment history and  
23 represented that he was working with big shot named Kirk James [Koskella]. According to the  
24 Investor, Defriese seemed to be very knowledgeable about investing.

25 26. Later, the Investor received a phone call from Defriese and Koskella [pretending to  
26 be Kirk James, a fictitious person]. During the phone call, Koskella, *using the name Kirk James*,

1 misrepresented to the Investor that he was an investment banker, a lawyer, and held many degrees.  
2 When in fact, the highest level of education completed by Koskella was 12<sup>th</sup> grade.

3 27. Koskella, *using the name Kirk James*, represented to the Investor that he had an  
4 investment company and was doing a lot of deals, including gold, medium-term notes, trading, and  
5 various finance deals. Koskella, *using the name Kirk James*, further represented to the Investor that  
6 he was the leader, brains, and mastermind behind Archimedes.

7 28. Defriese and Koskella, *using the name Kirk James*, represented to the Investor that  
8 Archimedes participated in investment trading programs that were available only a couple of times  
9 per year, and only for multi-millionaire investors. Defriese and Koskella, *using the name Kirk James*,  
10 further represented to the Investor that Archimedes pooled investors' funds together to invest in the  
11 trading programs. And, within a short term the investors would be paid back. Based on Defriese's  
12 and Koskella's representations, *purporting to be Kirk James' representations*, the Investor decided  
13 to invest in Archimedes investment contracts.

14 29. On or about February 15, 2016, Defriese emailed the Investor, and stated "[p]lease  
15 find the attached personal CIS (Client Information Sheet) for the small program ...Tell me if you  
16 want to do the 10K, 20K, or 25K. Call me if you have any questions." The attached CIS contained  
17 the following information about Archimedes: (1) Archimedes' Arizona mailing address and contact  
18 information; (2) Archimedes' Arizona business account held at Wells Fargo Bank, N.A.; (3) Hart  
19 was the trustee of Archimedes; and (4) *Kirk James* was the "Legal Advisor" of Archimedes.

20 30. On February 17, 2016, Defriese emailed the Investor, and stated "[p]lease find  
21 attached your contract for the small program. Please sign, have notarize [sic] and send back to me as  
22 soon as possible." On the same day, Defriese emailed the Investor again and stated "[p]lease find the  
23 attached 20K contract #11290. Please sign and have notarize [sic]."

24 31. The two investment contracts attached to Defriese's February 17, 2016 emails were  
25 both titled "Asset Management (JV) Agreement ('AMA')," and were identical except for their  
26 assigned contract nos. RHOM/AF-11290, and RHOM/AF-52816.

1           32.     Investment contracts RHOM/AF-11290 and RHOM/AF-52816 contained the  
2 following same or similar language: (1) This agreement is made between the Client [the Investor]  
3 and Archimedes Foundation Trust Group ("Archimedes"), located in Chandler, Arizona; (2)  
4 Archimedes is "represented by Mr. David C. Hart, as Trustee;" (3) Archimedes "shall provide access  
5 to capital funding, manage the Client's assets and manage disbursement of money, provided by and  
6 on behalf of the Client, maximizing highest returns, loan-to-value leverages possible with efforts;"  
7 and (4) "It is understood and agreed by the Parties that all profit proceeds that generates from  
8 investment trade activities mutually agreed to by the contracting Parties under this agreement, such  
9 proceeds shall be disbursed and shared proportionately as to the Profit Participation Disclosure."

10           33.     Investment contracts RHOM/AF-11290 and RHOM/AF-52816 further contained the  
11 following same or similar information: (1) "Date of contract: 17 February 2016;" (2) "Placement  
12 Amount: Twenty thousand United States dollars [\$20,000.00 USD];" (3) "Placement of term: 60  
13 day;" (4) "Placement date: 20 February 2016;" (5) "Return date: 20 April 2016;" (6) "Return  
14 calculation: One hundred twelve thousand United States dollars [\$112,000.00 USD];" (7) "Total  
15 capital return: One hundred thirty-two thousand United States dollars [\$132,000.00 USD];" and (8)  
16 Wiring instructions for Archimedes' business account held in Arizona at Wells Fargo Bank, N.A.

17           34.     On February 18, 2016, both Investment contracts RHOM/AF-11290 and RHOM/AF-  
18 52816 were executed by the Investor and Hart. The Investor invested a total \$40,000 on these  
19 investment contracts and was promised a total return of \$264,000 [which included the return of the  
20 Investor's principal investments] by April 20, 2016.

21           35.     On or about March 15, 2016, Defriese spoke with the Investor, via telephone,  
22 regarding additional investment opportunities via Archimedes' investment contracts. Shortly  
23 thereafter, the Investor wired \$100,000 to Archimedes' Arizona business account prior to receiving,  
24 reviewing, and executing the new investment contract.

25           36.     On March 30, 2016, Defriese emailed the Investor and stated "[p]lease sign, scan and  
26 return the attached document [investment contract]." The attached investment contract was titled



1 Statement of Position ("SOP 3023") and dated March 20, 2016. Shortly thereafter, SOP 3023 was  
2 executed by the Investor, Hart on behalf of Archimedes, and Defriese as the referring agent.

3 37. SOP 3023 contained the following same or similar information: (1) This SOP "is  
4 issued pursuant to the Consultant Services Master Contract between" the Client [the Investor] and  
5 the Contractor [Archimedes], "effective March 20, 2016 (the "Contract");" (2) This SOP is "entered  
6 into by and between Contractor and Client, and is subject to terms and conditions specified below;  
7 and, as enacted by the Placement Agent Industrial and Commercial Bank of China Limited  
8 ("ICBC");" (3) "The Services shall commence on March 20, 2016, and shall continue through May  
9 26, 2016;" (4) "The party, and parties to this Contract recognize the referring agent as: Rhombus  
10 Int'l Trust Group ("Rhombus"), located in La Grange, Georgia (Defriese's trust);" and (5)  
11 "Approved: Conrad Lynn Defriese, Consultant."

12 38. SOP 3023 further contained the following same or similar language: (1) "Contract  
13 Client has agreed to undertake a purchase and resale of Negotiable Instruments known as Bank  
14 Guarantees. In this instant circumstance, a singular party has defaulted in their performance under  
15 contract;" (2) The Client "has undertaken the financial interest of that party in default to complete  
16 the term of placement;" (3) ICBC shall provide the instruments which are resold in the open market.  
17 The instruments are defined as Bank Guarantees, promissory notes, standby letters of credit, and/or  
18 medium-term notes; (4) The purchase and "resale of instruments in the current Contract period with  
19 proceeds split based upon participation." Archimedes is the transfer agent and Rhombus remains the  
20 placement consultant; (5) The Client [the Investor] will provide "funds in the amount USD 100,000  
21 for the Contracted Position;" and (6) "This engagement will be conducted for the total contracted  
22 value Placement pursuant to this SOP, which shall not exceed USD 350,000."

23 39. On April 10, 2016, Defriese acting on behalf of Koskella, *using the name Kirk James*,  
24 emailed the Investor, and stated "[t]here are currently two placement positions which are available  
25 on a bank-to-bank basis. 7 weeks \$50k returning 335k. The ability to extend at 20% per week after  
26 the placement of 10 weeks." The Investor called Defriese and informed him that she would invest

1 \$50,000 in both placement positions. Later, Defriese emailed the Investor and stated “[p]lease find  
2 attached contract #3991 & 3992.” The attached investment contracts were titled Statement of  
3 Position (respectively “SOP 3991 and SOP 3992”).

4 40. SOP 3991 and SOP 3992 were identical to each other and identical to the SOP 3023,  
5 except the for the period of performance, and fee schedule. According to SOP 3991 and SOP 3992,  
6 “the Service shall commence on April 13, 2016, and shall continue through June 8, 2016.” The Client  
7 [the Investor] shall “provide funds in the amount of USD 50,000 x 2 for a total of USD 100,000 for  
8 the Contracted Position.” And, the “engagement will be conducted for the total contracted value  
9 Placement pursuant to this SOP, which shall not exceed USD 350,000 x 2.”

10 41. On or about April 11, 2016, SOP 3991 and SOP 3992 were executed by the Investor,  
11 Hart on behalf of Archimedes, and Defriese as the referring agent. The Investor wired \$100,000 into  
12 Archimedes’ Arizona business account, in exchange Respondents Archimedes, Hart, Koskella, and  
13 Defriese promised the Investor that she would receive a total return of \$700,000 by June 8, 2016.

14 42. On or about April 20, 2016, Defriese and Koskella, *using the name Kirk James*, spoke  
15 with the Investor, via the telephone. Both Defriese and Koskella, *using the name Kirk James*,  
16 represented that there was a new investment opportunity, via Archimedes investment contracts, with  
17 an Asian company that paid returns to investors through debit cards instead of by wire. Defriese and  
18 Koskella, *using the name Kirk James*, represented to the Investor that they were both going to invest  
19 and recommended that the Investor invest as well.

20 43. On April 25, 2016, Defriese emailed the Investor and stated “[p]lease find [sic]  
21 attached Asset Management Deposit Account (“AMDA”). Please have notarized.” On or about April  
22 28, 2016, the Investor, and Hart on behalf of Archimedes executed the investment contract, and the  
23 Investor wired \$50,000 into Archimedes’ Arizona business account. In exchange the Investor was  
24 promised a total return in the amount of \$112,500 by June 6, 2016.

25 44. The ADMA contained the following same or similar language: (1) By execution of  
26 this ADMA, the Investor “relinquishes all rights, title and interest to the funds noted under deposit,

1 for use by the Contract Holder: Archimedes,” for investment of funds on the Investor’s behalf; (2)  
2 “Archimedes has direct access and relations to registered financial institutional source of  
3 commitment for further engagement in entering Contract(s) for monetization, securitization and trade  
4 credits of acceptable A+ rated Bank Instrument(s) with a substantial higher face value(s);” (3)  
5 Archimedes “shall provide access to capital funding,” manage the Investor’s “assets and manage  
6 disbursement of money, provided by and on behalf of the Investor, maximizing highest returns, loan-  
7 to-value leverages possible with efforts;” and (4) “It is understood and agreed by the Parties that all  
8 profit proceeds that generates from investment trade activities mutually agreed to by the contracting  
9 Parties under this agreement, such proceeds shall be disbursed and shared proportionately as to the  
10 Profit Participation Disclosure.”

11 **Archimedes’ investment contracts (May of 2016, through June of 2016)**

12 45. On May 16, 2016, Defriese emailed the Investor and stated “*Kirk* asked me if I knew  
13 anywhere, he could borrow 55K quickly and will pay back 100K. I mentioned your name and got  
14 his permission to call you. Please give me a call when you get this email.” In response to Defriese’s  
15 email, the Investor had a conference call with Defriese and Koskella, *using the name Kirk James*.  
16 Koskella, *using the name Kirk James*, represented to the Investor that he wanted to buy a commercial  
17 property for the purpose of building a martial arts school for orphans, disadvantage youth, and kids  
18 in foster care. Koskella, *using the name Kirk James*, further represented that he was in the process of  
19 purchasing the building for the school but was short \$55,000 to pay the down payment. The Investor  
20 asked Koskella, *using the name Kirk James*, how he was going to pay for the building and Koskella,  
21 *using the name Kirk James*, represented that he was going to use the money he received from  
22 Archimedes to pay for the building.

23 46. The Investor informed Koskella, *using the name Kirk James*, that she has not received  
24 any returns on her investment contracts that were due on April 20, 2016, and the Investor could not  
25 afford to lose this money. In response, Koskella, *using the name Kirk James*, promised he would pay

26 ...

1 her back. Based on Koskella's representation, *purporting to be Kirk James' representation*, the  
2 Investor decided to invest.

3 47. Shortly after the conference call, Defriese emailed the Investor and stated "[p]lease  
4 see attached short term contract from *Kirk*."

5 48. The short-term contract contained the following same or similar information:

- 6 • "This contract ('Contract') is an agreement between Archimedes Foundation Trust,  
7 David C. Hart, Trustee ... ('Borrower')" and the Investor ("Lender");
- 8 • "Borrower wishes to borrow fifty-five thousand United States dollars (\$55,000.00  
9 USD), known as a "Loan," from Lender. Loan will be furnished to Borrower on May  
10 17, 2016, via wire transfer;
- 11 • "Borrower will begin repayment of Loan on May 25, 2016; upon receipt of credit line  
12 draw-down from the subject property at 138 North Country Club Drive, Mesa,  
13 Arizona 85201 USA;"
- 14 • "The repayment plan is one lump sum in the amount of one hundred thousand dollars  
15 (\$100,000.00 USD). Plus, return of the original principle [sic] of fifty-five thousand  
16 dollars (\$55,000.00); and
- 17 • "The final date for repayment will be no later than May 27, 2016."

18 49. On or about May 17, 2016, the Investor and Hart on behalf of Archimedes executed  
19 the short-term contract. The Investor wired \$55,000 to Archimedes' business account held in Arizona  
20 at Wells Fargo Bank, N.A.

21 50. Between February of 2016 through May of 2016, the Investor invested in a total of  
22 seven Archimedes' investment contracts, which were offered and sold by the Respondents  
23 Archimedes, Hart, Koskella, *using the name Kirk James*, and Defriese. During the relevant time-  
24 period, the Investor invested a total amount of \$345,000 in exchange Respondents Archimedes, Hart,  
25 Koskella, *using the name Kirk James*, and Defriese promised to pay the Investor a total return amount  
26 of \$1,591,500. However, all of the Investor's investment contracts matured on or before June 8,



1 2016, and the Investor has neither received any returns on her investments nor has the Investor  
2 received any returns of her principal investments.

3 51. In 2016, an Investor, who was a California resident was interested in starting a  
4 ministry. The Investor had some funds saved up; however, she needed more capital to start and build  
5 a ministry. Subsequently, the Investor was introduced to Kovacek. The Investor was led to believe  
6 that Kovacek would be able to assist her in starting a ministry. Eventually, Kovacek informed the  
7 Investor that he was not in position to help fund her ministry; however, Kovacek represented to the  
8 Investor that he had an investment opportunity in Arizona for her.

9 52. Kovacek represented to Investor that he and his business partner Kirk Koskella were  
10 purchasing a commercial property [located in Mesa, Arizona] to build a martial arts school for  
11 children of military, police, and firefighters, and less fortunate children who needed structure and a  
12 positive place to go. The Investor had a background in martial arts and a family history of military  
13 service and was interested in the investment opportunity.

14 53. On or about June 1, 2016, Kovacek introduced the Investor, via telephone, to  
15 Koskella. During the phone call, Koskella represented that he needed \$60,000 to assist in the  
16 purchase of a martial arts school, located in Mesa, Arizona. Koskella further represented to the  
17 Investor that she would make a return of \$100,000 within two- weeks.

18 54. Later that day, Koskella emailed the Investor, and attached Archimedes' offering  
19 documents, which included a short-term investment contract. Koskella was listed in the offering  
20 document as Archimedes' "Contracts Administrator." Koskella signed his name above his title, and  
21 cc'd Hart on the document.

22 55. Koskella's cover letter to the Investor contained the following same or similar  
23 information: (1) "As discussed, I am providing some information you may find necessary in moving  
24 forward with this short-term" investment contract; (2) "This project is an effort to assist youth whose  
25 families have been on extended deployment, lost a family member, have family incarcerated, or are  
26 otherwise absent from home;" (3) "Funding for the purchase of the current location initially fell

1 through.” Capital is needed to “extend escrow until closing,” which is expected to happen on June 6  
2 or 7, 2016; (4) “The total amount needed is \$60,000;” (5) \$50,000 may be sent directly to an escrow  
3 account held in Arizona, or to Archimedes’ Arizona business account; and (6) \$10,000 will be “used  
4 for utilities and a few improvement items that are underway to obtain the building occupancy  
5 permit.”

6 56. The short-term contract contained the following same or similar information:

- 7 • “This contract (‘Contract’) is an agreement between Archimedes Foundation Trust,  
8 David C. Hart, Trustee ... (‘Borrower’)” and the Investor (‘Lender’);
- 9 • “Borrower wishes to borrow sixty thousand United States dollars (\$60,000.00 USD),  
10 known as a “Loan,” from Lender. Loan will be furnished to Borrower on June 2, 2016,  
11 via wire transfer;
- 12 • “Borrower will begin repayment of Loan on June 9, 2016; upon receipt of credit line  
13 draw-down from the subject property at 140 North Country Club Drive, Mesa,  
14 Arizona 85201 USA;”
- 15 • “The repayment plan is one lump sum in the amount of one hundred thousand dollars  
16 (\$100,000.00 USD). Plus, return of the original principal of sixty thousand dollars  
17 (\$60,000.00), plus interest in the amount of forty thousand dollars (\$40,000);” and
- 18 • “The final date for repayment will be no later than June 12, 2016.”

19 57. On or about June 2, 2016, both the Investor and Hart on behalf of Archimedes  
20 executed the “short-term” investment contract. The Investor wired \$10,000 to Archimedes’ business  
21 account held in Arizona at Wells Fargo Bank, N.A. And, the Investor wired \$50,000 to the provided  
22 escrow account held in Arizona.

23 58. As of June 12, 2016, the Investor’s investment contract matured. However,  
24 Archimedes, Hart, Koskella, and/or Kovacek have failed to pay any returns to the Investor and have  
25 failed to return her principal investment. Respondents Archimedes, Hart, Koskella, and Kovacek  
26 ...

1 failed to disclose to the Investor that prior Investors were neither paid the promised returns on their  
2 investments, nor were their principal investments paid back.

3 **Archimedes' divestment of assets letter**

4 59. On or about October 17, 2016, Defriese emailed the previously mentioned Investor,  
5 who invested a total amount of \$345,000 in Archimedes' various investment contracts. Attached to  
6 Defriese's email was an official letter drafted by Hart on Archimedes' letterhead. The letter regarded  
7 Archimedes' "divestment of assets" and was addressed to "Joint Venture and AMA Partners."

8 60. Archimedes' divestment of assets letter was dated October 17, 2016, which contained  
9 the following same or similar information:

- 10 • "At the present time, the financial marketplace is fraught with uncertainty. There are  
11 global banks holding derivatives that could cause great concern for international  
12 investment holdings;"
- 13 • The equity-based ownership of "businesses and financial assets are impacted  
14 regardless of the nation in which we now participate;"
- 15 • For the foregoing reasons Archimedes "is currently divesting of all foreign and  
16 domestic positions, companies and assets which make up part of the current  
17 portfolio;"
- 18 • This week all current contracts will commence liquidation. All contracts will be  
19 redeemed from today's date;
- 20 • "Initial repayment will be of segregated assets used to purchase various positions. The  
21 remainder will be paid separately...."

22 **Koskella's funds repatriation letter**

23 61. On May 2018, Koskella, *using the name Kirk James*, emailed the previously  
24 mentioned Investor, who invested a total amount of \$345,000 in Archimedes' various investment  
25 contracts, a formal letter addressed to the Investor regarding funds repatriation. "*Kirk James, Esq.*  
26 ...

1 BA, LL B, LL M, CIF” was typed on the letterhead, and Koskella and Hart were cc’d on the letter.  
2 Koskella, *using the name Kirk James* signed the letter as “*Kirk James, Esq.*”

3 62. Koskella’s funds repatriation letter contained the following same or similar language:  
4 (1) I hereby acknowledge Archimedes’ “guaranteed returns on transactions noted as follows;” (2)  
5 “The principal of two-hundred-ninety-thousand Unites States dollars (\$290,000) ... plus the total  
6 guaranteed returns of one-million-one-hundred-forty-six-thousand-five-hundred United States  
7 dollars (\$1,146,500);” (3) “The fifty-five thousand United States dollars (\$55,000)” the Investor  
8 “wired for my use, via Archimedes (Wells Fargo US), for my martial-art-school-project, noting a  
9 guaranteed return on the loan of one-hundred-thousand United States dollars (\$100,000);” (4) A total  
10 of \$1,591,000 “is due and payable;” and (5) “As Archimedes, et al., has been unable to make returns,  
11 as noted, I have ventured to assist in the sale [sic] assets with the intent to use a portion of my  
12 proceeds to assist in repatriation of amount due you.”

13 **Hart’s admissions**

14 63. On September 26, 2019 and December 3, 2019, Hart made the following admissions:  
15 (1) Archimedes did not manage assets and did not have any assets under management; (2) “People  
16 would contact me, mainly churches and things like that ... because they knew I had a trust.” They  
17 knew that I had people that said we could help give you a return, private individuals;” (3) Individuals  
18 would contact Hart and mention that they made some money on investments and then would ask  
19 Hart to “help” them; (4) Hart has invested funds on behalf of Archimedes and that he has done “five  
20 or six [investment] transactions;” (5) Most of the investment “were by word of mouth. Most of them  
21 were by handshake;” (6) There were “two or three” investments that had executed documents; (7)  
22 Other than providing investment capital, the Investors “never did anything” and they relied on  
23 Archimedes to make a profit; (8) Hart received commissions on each Investor’s investment; (9) Hart  
24 received commissions in the range of \$200 to \$300, “they were nothing major;” (10) The Investors’  
25 investment funds were received in Archimedes business account held in Arizona at Wells Fargo  
26 Bank, N.A.; (12) Hart and Tucker (Hart’s Daughter) were the signers on Archimedes’ business



1 account; and (13) The Investors did not receive any returns on their investments and did not receive  
2 the return of their principal investments.

3 **Misuse of the Investors' funds**

4 64. At all times relevant, Hart and Tucker were the co-signers of Archimedes' business  
5 account held in Arizona at Wells Fargo Bank N.A., and both had access to the Investor's funds that  
6 were received in Archimedes' Arizona business account.

7 65. Between February of 2016, and May of 2016, one Investor invested a total of  
8 \$345,000. The Investor's funds were wired and/or deposited into Archimedes' Arizona business  
9 account to fund the Investor's investments. However, Archimedes, Hart and/or Tucker misused a  
10 portion of the Investor's funds for personal expenses and/or expenses not related to the Investor's  
11 investments.

12 66. During the relevant time-period, Archimedes, Hart, and/or Tucker misused a portion  
13 of the above-mentioned Investor's funds on the following: (1) Travel expenses for Tucker; (2)  
14 Numerous cash withdrawals; (3) Loan and/or payment to Mathis, Koskella's spouse; (4) Hotel fees  
15 and/or rent; (5) Several card purchases, including Apple online; (6) Car rentals; (7) Credit card  
16 payments; and (8) Payments to Koskella, other individuals, and entities.

17 67. Between March of 2015, and June of 2016, the other five Investors collectively  
18 invested a total amount of \$105,000. The other five Investors' funds were wired and/or deposited  
19 into Archimedes' Arizona business account to fund the Investors' investments. Archimedes, Hart  
20 and/or Tucker misused a portion of the other five Investors' funds for personal expenses and/or  
21 expenses not related to the Investors' investments.

22 68. During the relevant time-period, Archimedes, Hart and/or Tucker misused a portion  
23 of the other five Investors' funds on the following: (1) Numerous cash withdrawals; (2) Hotel fees  
24 and/or rent; and (3) Payments in 2015, to a martial arts association that Koskella was the chairman  
25 and president.

26 ...

69. The Investors collectively invested a total of \$450,000 and none of them have received any returns on their investments and have not received returns of their principal investments.

**IV.**

**VIOLATION OF A.R.S. § 44-1841**

**(Offer or Sale of Unregistered Securities)**

70. From at least of March of 2015, through at least June of 2016, Respondents Archimedes, Hart, Koskella, Defriese, and Kovacek collectively offered or sold securities in the form of investment contracts and/or promissory notes, within or from Arizona.

71. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

72. This conduct violates A.R.S. § 44-1841.

**V.**

**VIOLATION OF A.R.S. § 44-1842**

**(Transactions by Unregistered Dealers or Salesmen)**

73. Respondents Archimedes, Hart, Koskella, Defriese, and Kovacek offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

74. This conduct violates A.R.S. § 44-1842.

**VI.**

**VIOLATION OF A.R.S. § 44-1991**

**(Fraud in Connection with the Offer or Sale of Securities)**

75. In connection with the offer or sale of securities within or from Arizona, Respondents Archimedes, Hart, Koskella, Defriese, and Kovacek directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices, or courses of

1 business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents  
2 Archimedes', Hart's, Koskella's, Defriese's, and Kovacek's conduct includes, but is not limited to, the  
3 following:

4 a) Respondents Archimedes, Hart, Koskella, Defriese, and Kovacek failed to  
5 disclose to at least two Investors Koskella's permanent injunctions from the SEC;

6 b) Respondents Archimedes, Hart, Koskella, Defriese, and Kovacek failed to  
7 disclose to at least two Investors Koskella's federal criminal conviction, incarceration, and order of  
8 restitution;

9 c) Respondents Archimedes, Hart, Koskella, and Defriese failed to disclose to at  
10 least one Investor that Archimedes did not manage assets or have any assets under management;

11 d) Respondents Archimedes, Hart, Koskella, and Defriese failed to disclose to at  
12 least one Investor that Kirk James was an alias used by convicted felon Koskella;

13 e) Respondents Archimedes, Hart, Koskella, and Kovacek failed to disclose to at  
14 least one Investor that prior Investors were neither paid the promised returns on their investments, nor  
15 were their principal investments paid back;

16 f) Koskella misrepresented to at least one Investor that Koskella, *using the name*  
17 *Kirk James*, was an investment banker, a lawyer, and held many degrees. When in fact, the highest level  
18 of education completed by Koskella was 12<sup>th</sup> grade;

19 g) Respondents Archimedes, Hart, Koskella and Defriese misrepresented to at least  
20 one Investor that Kirk James was the legal advisor of Archimedes, when in fact, Kirk James was an alias  
21 used by Koskella; and

22 h) Respondents Archimedes, Hart, Koskella, and Defriese misrepresented to at  
23 least one Investor that her investment funds would be used to invest in trading platforms, when in fact,  
24 a portion of the Investor's funds were used by Archimedes, Hart, and/or Tucker for personal expenses  
25 or expenses not related to the Investor's investments.

26 76. This conduct violates A.R.S. § 44-1991.

**VII.****CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999**

74. From at least January of 2001, through at least November of 2013, Hart has been the sole trustee of Archimedes. Since December of 2013, Hart and Tucker have been co-trustees of Archimedes and both have been co-signers of Archimedes' business account.

75. At all times relevant, Hart and Tucker were persons who directly and/or indirectly controlled Archimedes within the meaning of A.R.S. § 44-1999 (B). Therefore, they are jointly and severally liable to the same extent as Archimedes is for its violations of A.R.S. § 44-1991.

**VIII.****REQUESTED RELIEF**

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;
2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
4. Order that Respondents and Respondent Spouses be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action.
5. Order any other relief that the Commission deems appropriate.

**IX.****HEARING OPPORTUNITY**

Each Respondent including Respondent Spouses may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting Respondent must also answer this Notice.** A request for hearing must be in



1 writing and received by the Commission within 10 business days after service of this Notice of  
2 Opportunity for Hearing. The requesting Respondent must deliver or mail the request to Docket Control,  
3 Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions  
4 may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at  
5 <http://www.azcc.gov/hearing>.

6 If a request for a hearing is timely made, the Commission shall schedule the hearing to  
7 begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the  
8 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission  
9 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of  
10 Opportunity for Hearing.

11 Persons with a disability may request a reasonable accommodation such as a sign language  
12 interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck,  
13 ADA Coordinator, voice phone number (602) 542-3931, e-mail [cdbuck@azcc.gov](mailto:cdbuck@azcc.gov). Requests should  
14 be made as early as possible to allow time to arrange the accommodation. Additional information  
15 about the administrative action procedure may be found at  
16 <http://www.azcc.gov/securities/enforcement/procedure>.

#### 17 X.

#### 18 ANSWER REQUIREMENT

19 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,  
20 the requesting Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing  
21 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona  
22 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be  
23 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site  
24 at <http://www.azcc.gov/hearing>.

25 Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant  
26 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a

1 copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007,  
2 addressed to Michael Shaw.

3 The Answer shall contain an admission or denial of each allegation in this Notice and the  
4 original signature of the answering Respondent or Respondent's attorney. A statement of a lack of  
5 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not  
6 denied shall be considered admitted.

7 When the answering Respondent intends in good faith to deny only a part or a qualification  
8 of an allegation, the Respondent shall specify that part or qualification of the allegation and shall  
9 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

10 The officer presiding over the hearing may grant relief from the requirement to file an Answer  
11 for good cause shown.

12 Dated this 3<sup>rd</sup> day of June, 2021.

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15 Wendy Coy  
16 Assistant Director of Securities  
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